



UNITED STATES PATENT AND TRADEMARK OFFICE

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FEB 15 2006

OFFICE OF PETITIONS

In re Application of	:	
Toshio Yamawaki	:	
Application No. 09/530,145	:	
Filed: April 24, 2000	:	DECISION ON
Atty Docket No.: 37395/DBP/A400	:	PETITION

This is a decision in response to the Renewed Petition to Withdraw Holding of Abandonment Due Under 37 CFR 1.181(a), filed December 21, 2005.

This Petition is hereby dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly respond to the Notice of Non-Compliant Amendment ("Notice"), mailed February 2, 2005. The Notice set a one (1) month period for reply. No response having been received, the application became abandoned on March 3, 2005. A Notice of Abandonment was mailed October 17, 2005.

October 10, 2005 Petition under 37 CFR 1.181

Applicant filed a petition on October 10, 2005 wherein Applicant asserted that he did not receive the Office action. In support of this assertion, Applicant filed Declarations of the Supervisor of the Docketing Department, and of the Legal Assistant to Applicant asserting that reviews of the log entries and file reveal that the Notice was not received. Applicant also filed copies of the weekly prosecution calendars for the

attorneys responsible for the prosecution of the above-identified application, putatively for the period of February 2, 2005 through March 2, 2005, which was allegedly where the non-received Notice would have been entered had it been received. Petition at p.2.

Petitioner was advised that, "[i]n order to overcome the presumption of delivery of an Office action, a practitioner must submit the following:

- (1) A statement from the practitioner stating the Office action was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received, and
- (3) A copy of the docket record where the non-received Office action would have been entered had it been received and docketed.

MPEP 711.03(c)

A review of the copies of the weekly prosecution calendars for the attorneys responsible for the prosecution of the above-identified application, putatively for the period of February 2, 2005 through March 2, 2005, revealed the dates of the calendar to be February 28, 2004 through March 14, 2004, and NOT February 2, 2005 through March 2, 2005. Applicant had failed to provide copies of his docket record where the non-received Notice would have been entered had it been received and docketed.

As such, the petition under 37 CFR 1.181 was dismissed in a Decision mailed November 23, 2005.

The instant petition

Applicant files the instant petition and docket records for the period of February 26, 2005 through March 13, 2005, and a Renewed Declaration of Daniel T. Ferris referencing the docket records for the period of February 26, 2005 through March 13, 2005.

However, the Notice in question was mailed by this Office on February 2, 2005, three (3) weeks BEFORE the docket records filed with the instant petition begin. Applicant must file docket records relevant to the period of time in question. I.e. February 2005.

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner supply any and all **relevant** information and documentation with his request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. A petition will not be granted if petitioner provides insufficient evidence to 'show' non-receipt of the Office action. Therefore, if a request for reconsideration is filed, it must establish non-receipt of the Office communication.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

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